IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 32 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DHAULGIRI INVESTMENTS PVT LTD - Applicant(s)

Versus

COMMISSIONER OF INCOME-TAX - Respondent(s)

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Appearance :
MR MK PATEL for applicant - assessee

MR MANISH R BHATT for Respondent - revenue
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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 26/08/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1.The following four questions have been referred under Section 256(1) of the Income Tax Act, 1961 (the Act) at the instance of the assessee :

> “(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in confirming the disallowance of commutation charges of Rs.2,33,924/- and in holding that the same was not business loss admissible either under section 28 or section 37 of the Act?
>
> (2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in rejecting the alternative claim of the appellant to the effect that the same was allowable as deduction u/s 57(iii) of the Act?
>
> (3)Whether, on the facts and in the circumstances of the case, the Tribunal was justified in rejecting the second alternative

argument of the appellant to the effect that the said amount represented capital loss u/s 45 of the I.T. Act, 1961 and ought to have been given full effect thereto?

(4)Whether the Tribunal was justified in law in holding that interest income of Rs.36,640/- was receivable from Sarabhai Chemicals on accrual basis, rejecting the contentions of the Appellant that the source in question being a new one, the Appellant could choose its own method of accounting in respect of interest income from this party which in fact was shown on receipt basis in the very next year?”

2.It is an admitted position between the learned advocates appearing on behalf of respective parties that the controversy stands concluded by a decision of this Court rendered today in

case of Kailash Investments Pvt. Ltd. v. The Commissioner of Income Tax, Gujarat, II, Income Tax Reference No.297 of 1995, wherein identical first three questions were referred. Therefore, it is not necessary to set out the facts and contentions in detail.

3. In the circumstances, for the reasons stated in the judgement rendered today in Income Tax Reference No.297 of 1995, it is held that the Tribunal was justified in rejecting the claims of the assessee and the first three questions are answered in the affirmative i.e. in favour of the revenue and against the assessee.

4. Insofar as the fourth question is concerned, the learned counsel for the assessee has very fairly invited attention to decision of this Court in case of Commissioner of Income Tax v. Super Scientific Clock Co., [1999] 238 ITR 731, to submit that the issue raised by the said

question stands concluded.

5.It appears that insofar as the outstanding amount from Sarabhai Chemicals is concerned, the assessing officer made an addition of Rs.36,640/- being interest receivable on the basis of method of accounting regularly employed, namely, mercantile system of accounting. The assessee's case was that this was a new source of income and hence, the assessee had an option to choose its own method of accounting in respect of interest income from Sarabhai Chemicals, and that, in fact, the amount had been shown on receipt basis in the subsequent years. The assessee's contention was negatived by the assessing officer, CIT (Appeals) and the Tribunal.

6.In the case of CIT v. Super Scientific Clock Co. (supra), in a converse situation where the issue related to accrual of liability, it was

laid down by this Court as under :

> “Under section 145 of the Income Tax Act, 1961, income under the head “Profits and gains” of business or profession, where the assessee maintains books of account, has to be in accordance with the method of accounting regularly employed by the assessee, which could be either cash, mercantile or hybrid system. The assessee for any particular source of income could adopt a different system of accounting, but in no case, can he employ for transactions or events relating to one source of income; a different system of part of the accounting. There cannot be a piecemeal method of accounting in respect of the same business or the same source of income or expenditure. It cannot be said that for a source of income one system is followed, but for some of expenses required to be incurred for earning income from that source, a different

method of accounting can be employed."

7. Applying the aforesaid ratio to the facts of the case, it is apparent that there cannot be piecemeal method of accounting in respect of the same business or the same source of income or expenditure. The assessee, therefore, cannot contend that though other income is shown on accrual basis so far as the interest income from Sarabhai Chemicals Pvt. Ltd. is concerned, it would show the same on cash basis.

8. The Tribunal was, therefore, justified in law in holding that interest income was receivable from Sarabhai Chemicals Pvt. Ltd. on accrual basis and the assessee was liable to be taxed on the same in the year under consideration. The question No.4 is accordingly answered in the affirmative i.e. in favour of the revenue and against the assessee.

9.The Reference stands disposed of accordingly. There shall be no order as to costs.

[D.A.MEHTA, J.]

[HARSHA DEVANI, J.]

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